**U.S. Const. amend. 1 Freedom of speech.**

**us.a1.fs.060** If the state has the power to regulate a form of speech, the statute must be the least restrictive alternative available.

*State v. Boehler,* 228 Ariz. 33, 262 P.3d 637, ¶¶ 8–25 (Ct. App. 2011) (court held city ordinance prohibiting soliciting "[i]n a vocal manner in a public area between sunrise and sunset" was unconstitutionally over broad).

**us.a1.fs.070** The right of free speech is not absolute and does not protect "fighting words," which are those that inflict injury by their very utterance or tend to incite an immediate breach of the peace.

*In re Nickolas S.,* 226 Ariz. 182, 245 P.3d 446, ¶¶ 10–22 (2011) (juvenile was adjudicated delinquent for two counts under A.R.S. § 15–507; court reversed one count when juvenile had muttered "bitch" under his breath, but upheld other count when juvenile had yelled several words, such as "you're a fucking bitch," directly at teacher in challenging manner).

**us.a1.fs.080** Analyzing whether particular speech constitutes"fighting words" involves **three** factors: **First,** the words must be directed at a particular person or group of persons.

*In re Nickolas S.,* 226 Ariz. 182, 245 P.3d 446, ¶¶ 3, 24 (2011) (juvenile yelled several words, such as "you're a fucking bitch" and "you stupid bitch" directly at teacher in challenging manner).

**us.a1.fs.090** Analyzing whether particular speech constitutes"fighting words" involves **three** factors: **Second,** the words must be personally abusive epithets or insults that, when addressed to the ordinary citizen, are as a matter of common knowledge inherently likely to provoke a violent reaction.

*In re Nickolas S.,* 226 Ariz. 182, 245 P.3d 446, ¶¶ 3, 24–27 (2011) (juvenile yelled several words, such as "you're a fucking bitch" and "you stupid bitch" directly at teacher in challenging manner; court noted U.S. Supreme Court had discussed "men of common intelligence," "average addressee," and "ordinary citizen," but had also considered "likelihood that the person addressed would make an immediate violent response," and thus concluded "this does not mean that all characteristics of the addressee should be ignored in determining if speech constitutes fighting words").

**us.a1.fs.100** Analyzing whether particular speech constitutes "fighting words" involves **three** factors: **Third,** the words must be evaluated in the context in which they are used to determine if it is likely that the addressee would react violently.

*In re Nickolas S.,* 226 Ariz. 182, 245 P.3d 446, ¶¶ 28–30 (2011) (juvenile yelled several words, such as "you're a fucking bitch" and "you stupid bitch" directly at teacher in challenging manner; court stated it "did not believe that [the juvenile's] insults would likely have provoked an ordinary teacher to 'exchange fisticuffs' with the student or to otherwise react violently," and because "Arizona teachers exemplify a higher level of professionalism," juvenile's conduct did not result in fighting words).

**U.S. Const. amend. 4 Search and seizure—Review of trial court's ruling on motion to suppress.**

**us.a4.ss.rev.010** In reviewing the admissibility of evidence, the appellate court will look only at the evidence presented at the hearing on the motion to suppress, and not to evidence presented at trial.

*State v. Hummons,* 227 Ariz. 78, 253 P.3d 275, ¶ 2 (2011) (court made general statement).

**U.S. Const. amend. 4 Search and seizure—Questioning.**

**us.a4.ss.qs.010** If a person is free to terminate the questioning and leave, an officer's stop of a person and a request to ask questions is not a "seizure" under the Fourth Amendment, and the officer does not need any level of probable cause or reasonable suspicion to do so.

*State v. Hummons,* 227 Ariz. 78, 253 P.3d 275, ¶ 7 (2011) (court noted law enforcement officers have wide latitude to approach people and engage them in consensual conversation, and are also free to request identification).

**U.S. Const. amend. 4 Search and seizure—Investigative stop and reasonable suspicion.**

**us.a4.ss.is.020** An officer may stop and detain a person for investigatory purposes if the totality of the circumstances gives the officer a reasonable, articulable suspicion that a particular person has committed, was committing, or was about to commit a crime or a traffic violation.

*State v. Britton,* 226 Ariz. 457, 250 P.3d 234, ¶¶ 6–8 (Ct. App. 2011) (defendant parked in parking space on private property marked for disabled parking; because defendant did not have disabled parking permit or plates, officer stopped her and arrested her for DUI; defendant contended officer did not have authority to investigate possible violation on private property; court held city has authority to establish requirements for off-street parking, therefore officer did have authority to investigate possible violation on private property, so stop was authorized by law).

**U.S. Const. amend. 4 Search and seizure—Exigent circumstances.**

**us.a4.ss.ec.010** An officer may search and seize evidence without a warrant if the officer has probable cause and exigent circumstances are present, but may not act without a warrant once the exigent circumstances no longer exist.

*State v. Aguilar,* 228 Ariz. 401, 267 P.3d 1193, ¶¶ 15–21 (Ct. App. 2011) (officer received information indicating drug sales were being made in particular motel room; officers went to that room, knocked on door, and identified themselves as police; when someone inside peeked out of curtains, officer told occupants they needed to open door and they had 3 seconds; about 30 seconds later, defendant opened door and officer saw marijuana on table; court held officers had probable cause to believe criminal activity was taking place in room and thus had probable cause to search, but found nothing to indicate anyone in room was destroying evidence, and thus held no exigent circumstances to justify ordering occupants to open door, thus evidence should be suppressed).

**U.S. Const. amend. 4 Search and seizure—Exigent circumstances—protective sweep.**

**us.a4.ss.ec.ps.010** When officers have arrested a person, (1) as a precautionary matter and without probable cause or reasonable suspicion, they may search closets and other spaces immediately adjacent to the place of the arrest from which an attack could be immediately launched; (2) to justify a broader protective sweep, the officers must have articulable facts that, taken together with the rational inferences from those facts, would warrant a reasonably prudent officer to believe the area to be swept harbors an individual posing danger to those on the arrest scene.

*State v. Manuel,* ___ Ariz. ___, ___ P.3d ___, ¶¶ 10–21 (Dec. 21, 2011) (based on informant's tip, police in North Carolina learned defendant was suspect in Phoenix murder and was staying with girlfriend (D.J.) at certain hotel, and also learned defendant had two outstanding auto theft warrants; when defendant emerged from second-floor room, officers forced him to floor and handcuffed him; D.J. came to door hysterical and screaming, so officers handcuffed her and took her downstairs; officers promptly conducted sweep of hotel room; officer lifted mattress and box spring from foot of bed to see if anyone was under it; officer then heard "clunking" sound and saw gun through mesh fabric covering bottom of box spring; court stated hotel room was immediately adjacent to place where officers arrested defendant and detained D.J., and thus warrantless sweep of room was justified by (1) above, and because person could have been hiding under bed, officer was justified in looking under bed, thus gun properly admitted).

*State v. Fisher,* 226 Ariz. 563, 250 P.3d 1192, ¶¶ 8–15 (2011) (officers investigated assault where victim had been pistol-whipped; victim provided physical description, nickname, description of vehicle, and address of suspect; officers went to address and knocked; man opened door and identified himself using nickname officers had been given; that man and two others exited residence, but none had gun; officers then conducted protective sweep of residence and found drugs in plain view; court held that, although officers knew gun had been used and could not account for gun when they questioned the three men, they had no articulable facts to lead them to believe another person might be in residence who could use gun, thus officers were not justified in making protective sweep to try to locate gun).

**U.S. Const. amend. 4 Search and seizure—Consent.**

**us.a4.ss.cs.150** If the police have engaged in illegal conduct and subsequently obtain evidence used against the defendant, the court must look at three factors to determine whether the taint of the illegal conduct is sufficiently attenuated from the evidence subsequently obtained: (1) the time elapsed between the illegal conduct and the acquisition of the evidence; (2) the presence of intervening circumstances; and (3) the purpose and flagrancy of the official misconduct; the 1st factor is the least important, for the 2nd factor, the discovery of a warrant is of minimal importance, and the 3rd factor is the most important.

*State v. Hummons,* 227 Ariz. 78, 253 P.3d 275, ¶¶ 7–15 (2011) (defendant was walking on street in "disheveled" clothing, but was carrying what appeared to be "very new" weed trimmer and neatly wound extension cord; officer questioned him and he seemed "very cooperative"; officer asked for some identification, and defendant provided his Arizona identification card; officer retained identification card for 5 to 10 minutes while she conducted warrants check and discovered defendant had outstanding misdemeanor arrest warrant; she intended to allow defendant to leave after she told him to take care of warrant, but he became aggravated and started yelling; so she arrested him, and in subsequent search found drugs; court held that, even assuming circumstances amounted to detention unsupported by reasonable suspicion, analysis of three factors showed: (1) although time between illegal conduct and acquisition of evidence was short, that was often least helpful factor; (2) defendant's arrest pursuant to outstanding warrant was intervening circumstance, but if police use illegal stop for purpose of seeking to discover warrant, that would create new form of police investigation; and (3) there was no evidence officer routinely approached citizens in hopes of discovering warrants, and officer's conduct showed no bad faith; thus trial court did not abuse discretion in denying motion to suppress).

**U.S. Const. amend. 5 Double jeopardy.**

**us.a5.dj.140** If the trial court grants a judgment of acquittal after the jurors have found the defendant guilty and the appellate court reverses the ruling of the trial court, that action does not violate the prohibition against double jeopardy because the court is merely reinstating the guilty verdict returned by the jurors.

*State v. West,* 226 Ariz. 559, 250 P.3d 1188, ¶ 13 (2011) (court made statement in context of discussion of standard for ruling on pre- and post-verdict motions for judgment of acquittal).

**U.S. Const. amend. 5 Self-incrimination—*Miranda.***

**us.a5.si.mir.070** If the police are required to give the *Miranda* warnings, the police must advise the suspect four things: (1) the suspect has the right to remain silent; (2) anything the suspect says may be used against the suspect in a court of law; (3) the suspect has the right to the presence of an attorney both before and during questioning; and (4) if the suspect cannot afford an attorney, one will be appointed prior to any questioning if the suspect so desires.

*State v. Carlson,* 228 Ariz. 343, 266 P.3d 369, ¶¶ 5–20 (Ct. App. 2011) (when officer said he would read rights to defendant, defendant said, "I waive my rights; I know my rights; I have the right to remain silent; anything that I say can and will be used; and I do have the right to remain silent; anything that I say can and will be used against me in a court of law; an attorney will be appointed to represent me if I cannot afford one; I waive my rights"; although defendant recited three element, he did not recite that attorney would be present both before and during questioning, thus defendant did not recite entire *Miranda* warning; court held officer was required to read defendant *Miranda* warnings, and because officer did not do so, court held trial court correctly suppressed defendant's statement; court notes state did not challenge defendant's motion to suppress on estoppel theory, as had been done in other states).

**U.S. Const. amend. 5 Self-incrimination—Comment on right to remain silent.**

**us.a5.si.cms.120** An instruction telling the jurors that the state does not have to produce all witnesses who may have been present at the time of the events in question does not lessen the state's burden of proof.

*State v. Abdi,* 226 Ariz. 361, 248 P.3d 209, ¶¶ 19–20 (Ct. App. 2011) (court held jurors would take that instruction to mean the state need not produce every scrap of evidence available).

**U.S. Const. amend. 8 Cruel and unusual punishment.**

**us.a8.cu.030** In determining whether punishment for a crime is cruel and unusual, courts must first determine whether there is a threshold showing of gross disproportionality by comparing the gravity of the offense and the harshness of the punishment.

*State v. Kasic,* 228 Ariz. 228, 265 P.3d 410, ¶¶ 13–27 & n.1 (Ct. App. 2011) (defendant committed four arsons while juvenile, and four more arsons once he was adult; trial court imposed consecutive sentences totaling 139¾ years, 80½ years of which were for offenses defendant committed while juvenile; court noted longest sentence defendant received for any count was 15¾ years, and held sentence was not disproportional to offense).

**us.a8.cu.050** Comparative analysis within and between jurisdictions is appropriate only in the rare case in which a threshold comparison of the crime committed and the sentence imposed leads to an inference of gross disproportionality.

*State v. Kasic,* 228 Ariz. 228, 265 P.3d 410, ¶ 27 (Ct. App. 2011) (defendant committed four arsons while juvenile, and four more arsons once he was adult; trial court imposed consecutive sentences totaling 139¾ years, 80½ years of which were for offenses defendant committed while juvenile; court noted longest sentence defendant received for any count was 15¾ years, and held sentence was not disproportional to offense; because court held sentence was not disproportionate, court did not have to conduct comparative analysis).

**us.a8.cu.110** In determining proportionality, courts usually do not consider the imposition of consecutive sentences.

*State v. Kasic,* 228 Ariz. 228, 265 P.3d 410, ¶ 24 (Ct. App. 2011) (defendant committed four arsons while juvenile, and four more arsons once he was adult; trial court imposed consecutive sentences totaling 139¾ years, 80½ years of which were for offenses defendant committed while juvenile; court noted longest sentence defendant received for any count was 15¾ years, and held sentence was not disproportional to offense).

**U.S. Const. amend. 14 Due process—Elements of the offense.**

**us.a14.dp.st.010** Under the Due Process Clause, the state must prove every element of the offense beyond a reasonable doubt.

*State v. Gamez,* 227 Ariz. 445, 258 P.3d 263, ¶ 37 (Ct. App. 2011) (in order to prove defendant guilty of sexual conduct of minor, state had to prove (1) defendant knowingly or intentionally engaged in sexual intercourse with victim, and (2) victim was under age of 18 at that time; there is no requirement that state prove defendant knew victim was under the age of 18; state satisfied that requirement by proving all elements).

**U.S. Const. amend. 14 Due process—Collection, retention, and disclosure of evidence.**

**us.a14.dp.ev.020** When the state has failed to preserve evidence the exculpatory nature of which is unknown or is only potentially exculpatory, the defendant must show the state acted in bad faith in order to show a due process violation.

*State v. Lehr,* 227 Ariz. 140, 254 P.3d 379, ¶¶ 36–42 (2011) (without consulting defendant's attorneys, state authorized DNA testing that consumed swab sticks from which DNA was extracted; defendant contended destruction of swab sticks denied him due process; court noted there was no evidence swab sticks were exculpatory (and indeed proved inculpatory because DNA matched defendant's DNA), and rejected defendant's contention that testing, which resulted in consuming them, without contacting his counsel, was bad faith; court held no due process violation).

**U.S. Const. amend. 14 Due process—Restraints.**

**us.a14.dp.rs.010** A trial court may not routinely place a defendant in shackles or other physical restraints, either visible or not visible to the jurors, and may do so only if there are specific factors present that show there is a specific need to place the defendant in shackles or other physical restraints; this rule applies both at the trial, and during the aggravation and penalty phases of a capital trial.

*State v. Dixon,* 226 Ariz. 545, 250 P.3d 1174, ¶¶ 26–29 (2011) (trial court cited only jail policy as reason to require defendant to wear leg brace; court noted reversal was required only if jurors could see restraint; court further noted there was no evidence jurors either saw leg brace or inferred defendant wore one).

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